

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NEW ENGLAND TREATMENT ACCESS, LLC,

Employer

and

Case No. 01-RC-264290

**UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 1445,**

Petitioner

**EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL
DIRECTOR'S ORDER DENYING MOTION FOR COLLATERAL
INVESTIGATION AND DISMISSAL OF PETITION**

In accordance with Section 102.67(c) of the National Labor Relation Board's Rules and Regulations, New England Treatment Access, LLC ("Employer" or "NETA") submits this Request for Review of the Regional Director for Region 1's Order Denying Motion for Collateral Investigation and Dismissal of Petition ("Order") dated September 23, 2020. (*See* Exhibit 1, Regional Director's Order). In his Order, the Regional Director found that the showing of interest used by the United Food and Commercial Workers, Local 1445 ("Petitioner" or "Union") in support of its Petition filed on August 7, 2020 and amended on September 21, 2020 (collectively, "the Petition") was not tainted despite express and direct solicitation of authorization cards by a supervisor. In so finding, the Regional Director not only refused to dismiss the Petition, but also refused to conduct a collateral investigation.

The following compelling reasons require the National Labor Relations Board ("NLRB" or "Board") to grant this request because a substantial question of law or policy is raised where the Order is clearly erroneous on the record and such error prejudicially affects the rights of the Employer on a substantial factual issue. For all the reasons set forth below, the Employer

respectfully asks the Board to (1) review the Regional Director's Order denying the Employer's Motion for Collateral Investigation and Dismissal of the Petition, and (2) conduct an expedited consideration of the Employer's Request for Review, *see* NLRB Rules and Regulations, Section 102.67(j)(1)(i), and upon such review, order the Regional Director to conduct a collateral investigation.

I. PROCEDURAL HISTORY

On August 7, 2020, the Union filed a petition, seeking to represent “[a]ll full-time and regular part-time agricultural, production, and maintenance employees” at the Employer's Franklin, Massachusetts facility. (Exhibit 2, Petition filed August 7). In its initial petition, the Union did not explicitly include or exclude Team Leads. On September 21, 2020, the Union filed an amended petition seeking to represent all full-time and regular part-time employees at the Franklin facility. In the amended petition, the Union specifically excluded “all casual, office clerical, and confidential employees, Team Leads, Coordinators, managers, guards, and supervisors as defined in the National Labor Relations Act (“the Act”).” (Exhibit 3, Amended Petition filed September 21).

II. STATEMENT OF FACTS

A. The Kitchen Team Lead Is a Supervisor Under the Act.

In its amended petition, the Union explicitly sought to exclude Team Leads, presumably because they are supervisors under the Act and, therefore, not appropriately included in any bargaining unit. Despite the fact that Team Leads are supervisors, as acknowledged by Kitchen Team Lead Jonathan Martins on an internet radio show that formed the evidentiary basis of the Employer's Motion, Mr. Martins assisted the Union with its organizing efforts and encouraged

employees to sign authorization cards. The Union willingly accepted this assistance despite the improper supervisory taint.

The record demonstrates that Team Leads are supervisors under the Act. As set forth in the Employer's Motion for Collateral Investigation, Martins possesses multiple indicia of supervisory authority. (Exhibit 4, Motion for Collateral Investigation). As a Team Lead, Martins was responsible, with other supervisors, for managing and supervising a group of approximately 23 Cooks and Dishwashers. The Kitchen Team Lead position is responsible for assisting the Kitchen Manager in the professional, safe and efficient operation of the Kitchen Department. Throughout his employment as a Team Lead, Martins "effectively recommended" discipline and other employment actions to the Kitchen Manager. On numerous occasions, he issued verbal or formal written warnings to employees that were co-signed by a higher-level supervisor. (*See* Exhibit 5, Employer's Position Statement).

In addition to regularly providing counseling and verbal and written warnings about work performance and absenteeism, Martins also assigned daily work to Kitchen Department employees, scheduled lunch break times, scheduled time off during the work day for employees who needed to run errands or attend doctor appointments, and scheduled his subordinates' days off. Martins also exercised his independent judgment to assign, re-assign, or transfer work among employees. For example, the Kitchen Department distributes a weekly production schedule outlining the items to be produced during the week (e.g., cookies, candies, gummies, etc.). Although the Kitchen Manager created the production schedule, Martins was responsible for assigning which employees did what work. Martins had the unfettered discretion to assign individuals to certain tasks without any oversight, input, or overruling from the Kitchen

Manager. In addition, Martins had the authority and discretion to re-assign tasks to employees based on their level of skill and/or experience.

Martins also regularly reviewed employee performance. Martins prepared annual written performance evaluations of the Kitchen Department employees. These evaluations examined a number of factors concerning an employee's performance, including but not limited to: whether the employee in question satisfied the expectations of the department; whether the employee was able to learn new processes, and whether the employee was abiding by NETA's and the Department's policies. Martins also identified areas of improvement or opportunities for the employee. These performance reviews were used to determine whether an employee would be promoted and/or receive merit wage increases.

Based on these facts, as well as the inference to be drawn from the Union's acquiescence to the exclusion of Team Leads from the bargaining unit, there is not any material dispute about Martins' supervisory status under the Act.

B. Martins Tainted the Union's Showing of Interest by Directly Soliciting Authorization Cards on Behalf of the Union.

With complete disregard for his supervisory status, Martins was a primary union organizer and leveraged his supervisory authority to coerce employees to provide union support and sign union authorization cards. The evidence demonstrating this fact comes from Martins' own statements.

On or about July 8, 2020, the Employer became aware that Martins participated in an internet radio show sponsored by the Union called, "The Young Jurks." (Exhibit 6a-6f, Letter to Region & Video Recordings Part 1 through 5); *see also* <https://www.facebook.com/theyoungjurks/videos/617433465545555/?redirect=false>. During the show, Martins made a

number of statements confirming his supervisory status. Regarding his kitchen subordinates, he said:

I lead them all. I help them with their projects. They're all the ones that cook everything. I'm more of a pencil pusher, a middle manager.

Recording at 7:38:42.¹

Also during the show, Martins stated that he led the union organizing effort at the Franklin facility:

We still have to get enough majority of the cards signed to have the vote. So I am actively just trying to talk to as many people as I can to get them to sign a digital card, answer any questions that they have (emphasis added).

Id. at 7:30:57 (emphasis added).

Anybody in Franklin, you've got questions about the union, you want a digital card to sign, come to me. I'm always around, always available.

Id. at 8:07:49. By his own account, Martins urged many employees to sign authorization cards.

There is no evidence the Union disclaimed, or refused to take advantage of, this support.

III. THE EMPLOYER'S MOTION FOR COLLATERAL INVESTIGATION AND FOR DISMISSAL OF THE PETITION SHOULD HAVE BEEN GRANTED

A. The Kitchen Team Lead Possesses Sufficient Supervisory Authority under the Act so as to Prohibit Him from Supporting the Union.

As demonstrated in the Employer's August 21, 2020 Position Statement, Martins is a supervisor under Section 2(11) of the Act. (*See* Exhibit 5). Moreover, and notably, the Union does not seem to contest Martins' supervisory authority. In fact, the Union modified its position in the amended petition to *exclude* Team Leads, presumably in acknowledgment of their

¹ The timestamps refer to the running time clock that is visible on the bottom-left-hand corner of the video recording of the internet radio show, which is available at: <https://www.facebook.com/theyoungjurks/videos/617433465545555/?redirect=false>.

supervisory status. In his Order, the Regional Director failed to make a determination on the Kitchen Team Lead's supervisory status, finding only that "even if the Kitchen Team Lead is a supervisor within the meaning of Section 2(11) of the Act," a collateral investigation was not warranted. (Order, p. 3). There is no indication that the Regional Director conducted any inquiry into Martins' status or the impact his actions had on the Union's organizing efforts.

B. The Regional Director Erred in Failing to Grant the Employer's Request for Collateral Investigation.

The undisputed evidence presented by the Employer in its Motion for Collateral Investigation demonstrates supervisory taint; however, the Regional Director refused to inquire as to the extent of supervisory taint. Supervisor support for a union will taint a showing of interest when the supervisor's actions would reasonably tend to coerce or interfere with the employees' exercise of free choice in the election. *Harborside Healthcare, Inc.*, 343 NLRB No. 100 (Dec. 8, 2004). *See also Napili Shores Condo. Homeowners' Ass'n v. NLRB*, 939 F.2d 717, 719 (9th Cir. 1991), *citing NLRB v. Island Film Processing Co.*, 784 F.2d 1446, 1452 (9th Cir. 1986) (supervisor support for a union will taint a showing of interest when the supervisor's actions would reasonably tend to lead the employees to support the union because they fear future retaliation by the supervisor). *Actual* coercion or intimidation is not required; circumstances that merely *tend to interfere* with the election are enough. *See id.* at 1452. Such is the case here.

If a supervisor directly solicits authorization cards, **those cards are tainted and may not be counted for the showing of interest.** *See National Gypsum Co.*, 215 NLRB 74 (1974); *Southeastern Newspapers, Inc.*, 129 NLRB 311 (1960) (petition dismissed when a supervisor participated in obtaining the signatures of the employees whose cards were submitted for the

showing of interest); *Toledo Stamping & Mfg. Co.*, 55 NLRB 865, 867 (1944) (petition dismissed when authorization cards secured with the assistance of a supervisor). Accordingly, Martins' actions in obtaining employee signatures on cards, including his general solicitation of cards as admitted on the internet radio show, require that the Petition be dismissed.

1. The Regional Director Improperly Ignored the Evidence of Supervisory Taint and Instead Downplayed Martins' Role in Union Solicitation.

The Regional Director, in his Order, implied that the Employer was required to interrogate employees regarding their Union support and the motivations for signing authorization cards. Such actions would undoubtedly violate Section 8 of the Act. The Regional Director held that "the Employer has provided no evidence that the Kitchen Team Lead directly solicited cards and if so, how many would be discounted because of his solicitation." (Order, p. 3). The only way the Employer could uncover that detailed information would be to interrogate employees, which it may not do. This was the very purpose of the collateral investigation sought by the Employer.

In denying the Employer's Motion, the Regional Director ignored the uncontroverted evidence of Martins' involvement in soliciting authorization cards. Martins admitted on the internet radio show that he was "just trying to talk to as many people as I can to get them to sign a digital card." He even made a plea directed to employees while on the show:

Anybody in Franklin, you've got questions about the union, you want a digital card to sign, come to me. I'm always around, always available.

Martins used the radio show to promote his Union organizing efforts, urging employees to sign a digital card and to seek him out if they had questions about the Union, arguably to provide

additional support to the Union's efforts. The Regional Director's finding of insufficient evidence of supervisory taint despite the implications of Martins' statements is clearly erroneous.

However, even if the statements on the radio show were somehow deemed to be insufficient evidence of "solicitation" under the Board's standards, Martins also acknowledged during the radio show that he was affirmatively seeking to have employees sign authorization cards and engaging in other activities *at the workplace*. Despite this admission, the Regional Director erroneously implied that Martins' only action supporting the Union was during the radio show itself. This ignores the importance of Martins' own words, as presented in the Employer's Motion.

The Regional Director held that "there is no basis for even determining how many employees listened to or are even aware of the online radio show comments he made and then subsequently sign authorization cards as a result of those remarks." (Order, p. 3). In so finding, the Regional Director failed to address the undisputed evidence of Martins' radio show boasts and admissions – that he was "talking to as many people" as he could and actively soliciting cards on behalf of the Union - while at work. Notably, Martins acknowledged he's "always around" and was trying to get as many employees as possible to sign digital authorization cards. His unlawful activity went far beyond the radio show. In addition to the pleas made on the show, Martins bragged about what he had already done – actively seeking to have employees sign authorization cards. Regardless of whether employees heard the radio show, Martins admitted he improperly tainted the Union's showing of interest both by his actions on the radio show and, more importantly, by his conduct at work, where he solicited employees to sign authorization cards. The Regional Director's failure to recognize the impact of Martins' involvement is improper and substantially prejudiced the Employer.

2. The Regional Director Failed to Acknowledge the Lack of Mitigating Circumstances.

As set forth in the Board's Casehandling Manual ("CHM"), Part Two, Section 11028.2, direct involvement sufficient under the Board's standards may include "the employer's supervisors circulating the showing [of interest], or threatening individual employees with discharge if they failed to sign the showing." The CHM also states that "[s]upervisory solicitation of authorization cards is *inherently coercive* absent mitigating circumstances." *Id.* (*emphasis added*), citing *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004).

In accordance with the guidance set forth in the CHM, there is no dispute Martins circulated the authorization cards used as part of the Union's showing of interest. By his own statements, Martins was "*trying to talk to as many people as [he could] to get them to sign a digital card.*" In the same recording, Martins acknowledged the control he had over employees and implied he used his influence to impact the employees' decisions, stating at least about the 23 Kitchen Department employees, "I lead them all."² Despite this admission and the uncontroverted evidence, the Regional Director rejected the Employer's request for a collateral investigation to determine whether Martins' actions constituted supervisory taint. There are no mitigating circumstances that would otherwise change Martins' inherently coercive actions and render them non-coercive.

3. The Apparent Standard Applied by the Regional Director Imposed on the Employer a Duty of Production in Excess of What is Required by Board Precedent.

In denying the Employer's Motion, the Regional Director's Order appears to have applied a more stringent standard than required by Board precedent. The Regional Director

² The evidence establishes Martins exercises control over the employees in the petitioned-for unit. There is no evidence that employees were aware that Martins' actions were not condoned by the Employer or that Martins was not supposed to be engaging in Union activity.

erroneously stated the applicable standard as: “The Board has held that if a supervisor *directly* (emphasis added) solicits cards, those *particular* (emphasis added) cards are tainted and may not be counted for showing of interest purposes.” (Order, p. 3 (emphasis in original), *citing In re Dejana Industries*, 336 NLRB No. 127 (2001)). The Regional Director’s Order appears to require the Employer to identify *which* cards were specifically tainted by the supervisor’s conduct. *Dejana Industries* does not impose that level of proof on the Employer.

In the Order, the Regional Director added emphasis to the word “particular,” a word that does not appear in *Dejana*’s statement of the relevant standard. In so doing, and by referencing the phrase, “particular cards,” the Regional Director seems to have placed a burden on the Employer to demonstrate which “particular” cards were impacted by Martins’ actions. However, this is more than *Dejana* requires. The standard enunciated in *Dejana* merely required that there be a finding of supervisory solicitation, which in and of itself renders impacted cards void. It is not the Employer’s burden to identify the cards with particularity. If supervisory solicitation occurred, the tainted cards (however they are identified) cannot be counted.

Because the Employer may not engage in unlawful interrogation of employees, and the Regional Director did not actually conduct the requested collateral investigation, the Employer can only take Martins’ own words for the meaning they convey. Martins said he was actively trying to talk to as many employees as he could to get them to sign cards, and not just employees in the Kitchen Department, but for “[a]nybody in Franklin.” Based on Martins’ own words, the Employer concluded that Martins participated in gathering a large portion of the Union’s showing of interest. In his role as Team Lead, Martins was able to interact with employees in all departments on a daily basis and had an opportunity to make good on his plan “to talk to as many” employees as possible “to sign a digital card.”

Moreover, the Board has not limited supervisory taint to those instances where a supervisor circulated authorization cards. Rather, in *El Rancho Market*, 235 NLRB 468, 473-74 (1978), the Board provided an alternative standard to be applied in analyzing taint. The Board noted that to establish supervisory taint, “it must be affirmatively established either that the supervisor’s activity was such as to have implied to employees that their employer favored the union or that there is cause for believing that employees were coercively induced to sign authorization cards because of fear of supervisory retaliation.” *See also Juniata Packing Co.*, 182 NLRB 934, 935 (1970), *enfd.* in relevant part 464 F.2d 153 (3d Cir. 1972); *Waldinger Corp.*, 331 NLRB 544, 546 (2000); *WKRG-TV, Inc.*, 190 NLRB 174, 175 (1971), *enfd.* 470 F.2d 1302 (5th Cir. 1973); *Orlando Paper Co.*, 197 NLRB 380, 387 (1972), *enfd.* 480 F.2d 1200 (5th Cir. 1973); *Kut Rate Kid & Shop Kwik*, 246 NLRB 106, 107 (1979).

While the Employer here cannot specifically identify the cards Martins influenced, Martins’ own statements demonstrate that he broadly solicited authorization cards, conduct the Board has held to be “inherently coercive.” CHM Section 11028.2. Moreover, he engaged in behavior which could have caused employees to believe that he, as a supervisor, favored the Union, and they may face retaliation if they refused to sign a card he offered. The Regional Director’s Order did not analyze Martins’ conduct under this standard.

Even if Martins’ words on the radio show alone had not urged specific individual employees to sign authorization cards, that does not end the inquiry. The fact that Martins, a supervisor, admitted that he solicited authorization cards at work, and by his actions, likely made employees believe the Employer supported the Union efforts, is sufficient to establish improper taint. The underlying facts establishing this taint are undisputed. Martins admitted, indeed, he bragged, about as much on the Union-sponsored radio show.

By failing to consider all of the evidence presented and rejecting the Employer's assertions without a comprehensive review of the evidence or any collateral investigation, the Regional Director failed to apply established Board precedent. The Regional Director should have granted the Employer's motion to conduct a collateral investigation to determine whether Martins' conduct improperly tainted the Union's showing of interest. Had the Regional Director conducted a reasonable and comprehensive investigation, he would have confirmed what the evidence established – that Martins engaged in improper solicitation of the Union authorization cards – and as a result, he would have had to dismiss the petition. The Regional Director's failure to do so was error.

IV. CONCLUSION

For those reasons outlined above, the Employer respectfully requests that this Request for Review be granted.

NEW ENGLAND TREATMENT ACCESS, LLC

By its attorneys,

/s/ Neil V. McKittrick

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Dated: October 7, 2020

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

NEW ENGLAND TREATMENT ACCESS, LLC
Employer

and

LOCAL 1445, UNITED FOOD &
COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

Case 01-RC-264290

ORDER DENYING MOTION FOR COLLATERAL INVESTIGATION AND
DISMISSAL PETITION

On August 7, 2020, Local 1445, United Food & Commercial Workers International Union, AFL-CIO, CLC (Petitioner) filed a petition to represent all full-time and regular part-time agricultural, production, and maintenance workers employed at New England Treatment Access, LLC's (Employer) Franklin, Massachusetts facility.

On August 21, 2020, the Employer filed a Motion for Collateral Investigation, Dismissal of the Petition, and Postponement of Hearing (Employer's Motion) and a Statement of Position alleging that the Petitioner's showing of interest was tainted by the conduct of an individual purported to be a supervisor as defined in Section 2(11) of the Act.

The Employer alleges that a Team Lead in the Employer's Kitchen Department (Kitchen Team Lead) was actively involved in the Petitioner's organizing efforts. The Employer provided

video evidence showing that the Kitchen Team Lead participated in an online radio program called “The Young Jurks” around July 8, 2020 during which, the Kitchen Team Lead encouraged employees to sign authorization cards and support the Union, and to see him if they wished to sign a card. The Employer alleges that the statements made by the Kitchen Team Lead during the online radio program encouraging employees to sign union authorization cards, offering to provide employees with union authorization cards, and answering questions about the Petitioner were coercive, thereby tainting the showing of interest submitted by the Petitioner.

The Employer further requests that the Board cease further processing of this petition under the Board’s blocking charge policy until the showing of interest issue has been fully investigated.

On August 26, 2020, the Petitioner filed a response to the Employer’s Motion. The Petitioner argues that the showing of interest is an administrative matter that is subject to the discretion of the Board and may not be litigated. It also argues that the Kitchen Team Lead is not a supervisor and maintains that, even if he is and directly solicited cards, the only cards that could have been tainted are those signed by the employees who worked directly under him. The Petitioner maintains that even if the cards signed by his putative subordinates are removed from consideration, it still possesses a sufficient showing of interest. Moreover, the Petitioner alleges that even if the Kitchen Team Lead was a supervisor, any coercive impact of any statements he made was fully eradicated when the Employer terminated him on July 15, 2020.¹

¹ The Petitioner’s arguments really address whether the putative supervisor’s conduct would provide a basis for setting aside the election and are not applicable as to whether the showing of interest was tainted in the first place.

Denial of Motion

The Employer has presented insufficient evidence of the putative supervisor's involvement in the direct solicitation of union authorization cards. The Employer relies exclusively on remarks made by the Kitchen Team Lead on an obscure online radio show. It provided no evidence that he directly solicited employees to sign union authorization cards or of how many, if any, employees heard his remarks and signed cards based on them.

The Board has held that if a supervisor *directly* (emphasis added) solicits cards, those *particular* (emphasis added) cards are tainted and may not be counted for showing of interest purposes. *Dejana Industries*, 336 NLRB 1202 (2001). In this case, the Employer has provided no evidence that the Kitchen Team Lead directly solicited cards and if so, how many would be discounted because of his solicitation. This is especially true where there is no basis for even determining how many employees listened to or are even aware of the online radio show comments he made and then subsequently signed authorization cards as a result of those remarks. Therefore, even if the Kitchen Team Lead is a supervisor within the meaning of Section 2(11) of the Act, there is no basis for concluding that he directly solicited authorization cards or that he solicited enough authorization cards that the showing of interest would be insufficient if those cards were excluded from consideration.

Therefore, I have decided that a collateral investigation is unwarranted and the Employer's Motion to Dismiss is hereby denied.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Order after the election on the grounds that it did not file a request

for review of this Order prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 23, 2020

A handwritten signature in cursive script, reading "Paul J. Murphy".

Paul J. Murphy, Acting Regional Director
National Labor Relations Board
Region 1
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

EXHIBIT 2

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION


DO NOT WRITE IN THIS SPACE

Case No.
01-RC-264290

Date Filed
8-7-2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: New England Treatment Access LLC		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 5 Forge Parkway, Franklin, MA 02038	
3a. Employer Representative - Name and Title: Matt Lowther, Sr. Director Operations		3b. Address (if same as 2b - state same): same	
3c. Tel. No. 508-528-0093	3d. Cell No.	3e. Fax No.	3f. E-Mail Address mlowther@liveparallel.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) marijuana cultivation and processing		4b. Principal Product or Service recreational and medicinal marijuana	
5a. City and State where unit is located: Franklin, MA		5b. Description of Unit Involved: Included: SEE ATTACHED Excluded:	
6a. Number of Employees in Unit: 197		6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (if none, so state)		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	
8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)			
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>No</u> <input checked="" type="radio"/> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)			
10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election:		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): August 28, 2020	11c. Election Time(s): 10 AM to 2 PM and 4 PM to 6 PM	11d. Election Location(s): conference room at NETA Franklin	
12a. Full Name of Petitioner (including local name and number): United Food & Commercial Workers, Local 1445		12b. Address (street and number, city, State and ZIP code): 30 Stergis Way	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): United Food & Commercial Workers International Union, AFL-CIO, CLC			
12d. Tel. No. 781-461-6775	12e. Cell No.	12f. Fax No. 781-461-0677	12g. E-Mail Address fdasilva@ufcwlocal1445.org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Alfred Gordon O'Connell, General Counsel		13b. Address (street and number, city, State and ZIP code): Pyle Rome Ehrenberg PC, 2 Liberty Square, 10th Floor, Boston MA 02109	
13c. Tel. No. 617-367-7200	13d. Cell No.	13e. Fax No. 617-367-4820	13f. E-Mail Address agordon@pylerome.com
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Alfred Gordon O'Connell	Signature 	Title General Counsel	Date 8/7/2020

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

ATTACHMENT TO RC PETITION
UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1445 and
NEW ENGLAND TREATMENT ACCESS LLC

BOX 5b. Description of Unit involved

- Included: All full-time and regular part-time agricultural, production and maintenance workers employed at the Employer's Franklin, Mass., facility.
- Excluded: All casual employees, office clerical employees, confidential employees, supervisors, managers, guards, and supervisors as defined in the Act.

EXHIBIT 3

FIRST AMENDED RC PETITION

DO NOT WRITE IN THIS SPACE


Case No.

01-RC-264290

Date Filed

9-21-2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
2a. Name of Employer: New England Treatment Access LLC		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 5 Forge Parkway, Franklin, MA 02038	
3a. Employer Representative - Name and Title: Matt Lowther, Sr. Director Operations		3b. Address (if same as 2b - state same): same	
3c. Tel. No. 508-528-0093	3d. Cell No.	3e. Fax No.	3f. E-Mail Address mlowther@liveparallel.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) marijuana cultivation and processing		4b. Principal Product or Service recreational and medicinal marijuana	
5b. Description of Unit Involved: Included: All full-time and regular part-time employees of the Employer at its Franklin, Mass., facility. Excluded: All casual employees, office clerical employees, confidential employees, Team Leads, Coordinators, managers, guards, and supervisors as defined in the Act.		5a. City and State where unit is located: Franklin, MA	
6a. Number of Employees in Unit: 197		6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (if none, so state)		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	
8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)			
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>No</u> <input checked="" type="radio"/> If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)			
10a. Name		10b. Address	
10c. Tel. No.		10d. Cell No.	
10e. Fax No.		10f. E-Mail Address	
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
11b. Election Date(s): October 9, 2020		11c. Election Time(s): 10 AM to 2 PM and 4 PM to 6 PM	
11d. Election Location(s): conference room at NETA Franklin			
12a. Full Name of Petitioner (including local name and number): United Food & Commercial Workers, Local 1445		12b. Address (street and number, city, State and ZIP code): 30 Stergis Way	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): United Food & Commercial Workers International Union, AFL-CIO, CLC			
12d. Tel. No. 781-461-6775	12e. Cell No.	12f. Fax No. 781-461-0677	12g. E-Mail Address ufcw1445@ufcwlocal1445.org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Alfred Gordon O'Connell, General Counsel		13b. Address (street and number, city, State and ZIP code): Pyle Rome Ehrenberg PC, 2 Liberty Square, 10th Floor, Boston MA 02109	
13c. Tel. No. 617-367-7200	13d. Cell No.	13e. Fax No. 617-367-4820	13f. E-Mail Address agordon@pylerome.com
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Alfred Gordon O'Connell		Signature 	Title General Counsel
		Date 8/7/2020	

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

ATTACHMENT TO RC PETITION
UNITED FOOD & COMMERCIAL WORKERS, LOCAL 1445 and
NEW ENGLAND TREATMENT ACCESS LLC

BOX 5b. Description of Unit involved

Included: All full-time and regular part-time employees of the Employer at its Franklin, Mass., facility.

Excluded: All casual employees, office clerical employees, confidential employees, Team Leads, Coordinators, managers, guards, and supervisors as defined in the Act.

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1

NEW ENGLAND TREATMENT)	
ACCESS, LLC,)	
)	
Employer,)	
)	
and)	Case No. 01-RC-264290
)	
UNITED FOOD AND COMMERCIAL)	
WORKERS, LOCAL 1445,)	
)	
Petitioner.)	
)	

**MOTION FOR COLLATERAL INVESTIGATION,
DISMISSAL OF PETITION AND POSTPONEMENT OF HEARING**

New England Treatment Access, LLC (“NETA” or “Employer”) requests an administrative investigation of the Petitioner’s showing of interest.¹ This request is based on evidence that Jonathan Martins, while employed as a Section 2(11) supervisor for the Employer, actively participated in securing the Petitioner’s showing of interest, thereby violating the employees’ rights under Section 7 of the National Labor Relations Act (“the Act”). To the extent Mr. Martins engaged in this improper conduct with the knowledge of the Petitioner, the Petitioner has violated Section 8(b) of the Act as well.

Mr. Martins was a statutory supervisor pursuant to Section 2(11) of the Act. As explained in the Employer’s Statement of Position, Martins was a Team Lead in NETA’s Kitchen Department. As a Team Lead, he was responsible, with other supervisors, for managing and supervising a group of approximately 23 Cooks and Dishwashers. The Kitchen Team Lead

¹ *Georgia Craft Co.*, 120 N.L.R.B. 806 (1958); *Globe Iron Foundry*, 112 N.L.R.B. 1200 (1955).

position is responsible for assisting the Kitchen Manager in the professional, safe and efficient operation of the Kitchen Department. Throughout his employment as a TL, Martins “effectively recommended” discipline and other employment actions to the Kitchen Manager. On numerous occasions, he issued verbal or formal written warnings to employees which would be co-signed by a higher-level supervisor.

In addition to regularly giving counseling and verbal and written warnings about work performance, absenteeism, and customer service, Martins also assigned daily work to Kitchen Department employees, scheduled lunch break times, scheduled time off during the work day for employees who needed to run errands or attend doctor appointments, and scheduled his subordinates’ days off. Martins also exercised his independent judgment to assign, re-assign, or transfer work among employees. For example, the Kitchen Department distributes a weekly production schedule outlining the items to be produced during the week (e.g., cookies, candies, gummies, etc.). Although the Kitchen Manager created the schedule, Mr. Martins was responsible for assigning which employees did what work. Mr. Martins had the unfettered discretion to assign individuals to certain tasks without any oversight, input, or overruling from the Kitchen Manager. In addition, Mr. Martins had the authority and discretion to re-assign tasks to employees based on their level of skill and/or experience.

Mr. Martins also regularly reviewed employee performance. Mr. Martins prepared annual written performance evaluations of the Kitchen Department employees. These evaluations examined a number of factors concerning an employee’s performance, including but not limited to: whether the employee in question satisfied the expectations of the department; whether the employee was able to learn new processes, and whether the employee was abiding

by NETA's and the Department's policies. Mr. Martins also identified areas of improvement or opportunities for the employee.

As demonstrated in the Statement of Position, Mr. Martins described in his own words how he actively participated in the union's organizing efforts, including encouraging employees to sign union authorization cards. He also appeared on an online radio program during which he sought to persuade employees to sign authorization cards and support the union. *See* Statement of Position.

This coercive conduct was directed toward employees who were supervised by Martins as well as other employees. *Glen's Market and UFCW Local 876*, 344 N.L.R.B. No. 25 (February 22, 2005). Accordingly, Petitioner's showing of interest was illegally obtained and is tainted by supervisory intervention and participation. *Harborside Healthcare, Inc. and Service Employees International Union, Local 47*, 343 N.L.R.B. No. 100 (December 8, 2004), *on remand from Harborside, Inc. v. NLRB*, 230 F.2d 206 (6th Cir. 2000).

The Region should invoke the Board's blocking charge policy and cease further processing of this R case matter until the showing of interest and unfair labor practice issues have been fully investigated. Thus, the hearing currently scheduled for August 31, 2020 should be postponed, and any further rescheduling (if appropriate) should await the outcome of this investigation. It is likely that a full investigation of these issues will lead to dismissal of the petition.

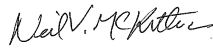
WHEREFORE, the Employer asks that the petition be dismissed, *Sourdough Sales*, 246 N.L.R.B. 106 (1979); *Dexter Foods, Inc.*, 209 N.L.R.B. 369 (1974), with instructions that Petitioner be precluded from attempting to secure a new showing of interest for no less than six (6) months following the dismissal. This minimal period of time is necessary to remove the taint

of supervisory participation and to ensure the employees' ability to freely and properly exercise their Section 7 rights.

As noted above, the Employer respectfully requests that the R case hearing in this matter, currently scheduled for August 31, 2020, be postponed, while the Regional Director conducts the requested collateral investigation.

NEW ENGLAND TREATMENT ACCESS, LLC

By its attorneys,



Neil V. McKittrick
Lorenzo R. Cabantog
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
One Boston Place, Suite 3500
Boston, MA 02108
(617) 994-5700
Neil.mckittrick@ogletreedeakins.com
Lorenzo.cabantog@ogletreedeakins.com

Dated: August 21, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2020, a true and correct copy of the foregoing Motion For Collateral Investigation, Dismissal Of Petition and Postponement Of Hearing was served via e-mail on the following:

Counsel for the Charging Party:

Al Gordon, Esq.
2 Liberty Square, 10th Floor
Boston, MA 02109
agordon@pylerome.com

/s/ Lorenzo R. Cabantog
Lorenzo R. Cabantog
Counsel for New England Treatment Access, LLC

43895548.2

EXHIBIT 5

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 01-RC-264290	Date Filed August 7, 2020

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position New England Treatment Access, LLC		1c. Business Phone: 844-783-6382	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code) 5 Forge Parkway, Franklin, Massachusetts, 02038		1d. Cell No.:	1f. e-Mail Address mlowther@liveparallel.com
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes [] No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? [] Yes <input checked="" type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) See Attachment A. NETA does not employ employees in agricultural, production, or maintenance departments.			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added Employees in the following departments: Cultivation, Cure Room, Environmental Services, Extraction, Facilities, Flower Production, Harvest, Inventory, Integrated Pest Management, Kitchen, MIP, and PM Processing.		Excluded All casuals, office clericals, confidential employees, supervisors, managers, and guards under the Act.	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input checked="" type="checkbox"/> Yes [] No If yes, state the basis for your position. See Attachment A, supervisory taint.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input checked="" type="checkbox"/> Manual [] Mail [] Mixed Manual/Mail			
8b. Date(s) 9/25/2020	8c. Time(s) 6:30am-8:30am 11:00 am - 12:30 pm 2:30pm - 4:30 pm	8d. Location(s) Labeling Room 5 Forge Parkway	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date 7/25/2020	8g. Length of payroll period [] Weekly <input checked="" type="checkbox"/> Biweekly [] Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative Lorenzo R. Cabantog	9b. Signature of authorized representative /s/Lorenzo R. Cabantog	9c. Date 8/21/2020	
9d. Address (Street and number, city, state, and ZIP code) One Boston Place, Suite 3500, Boston, MA 02108			9e. e-Mail Address lorenzo.cabantog@ogletree.com
9f. Business Phone No.: 617.994.5713		9g. Fax No.	9h. Cell No. 617.763.7047

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Attorneys at Law

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August 21, 2020

Jarad Krantz
Field Examiner
United States Government
National Labor Relations Board
Region 1
10 Causeway Street, Suite 601
Boston, Massachusetts 02222

RE: New England Treatment Access, LLC & UFCW Local 1445
Case No. 01-RC-264290

Dear Mr. Krantz:

This letter is attached to the Statement of Position of New England Treatment Access, LLC (“NETA” or the “Employer”) filed pursuant to the Regional Director’s letter and Notice of Hearing dated August 7, 2020, the August 18, 2020 Order Rescheduling Hearing and in response to the Petition for Representation Election filed by the United Food & Commercial Workers, Local 1445 (“UFCW” or “Petitioner”). For the reasons discussed below, the proposed election is barred by supervisory taint based on the conduct by Jonathan Martins, who while a Section 2(11) supervisor for the Employer, solicited union support and leveraged his supervisory authority to coerce employees into signing union authorization cards.

I. FACTS

A. The Positions in the Petitioned-for Unit.

The UFCW has petitioned for the following bargaining unit:

Included: All full-time and regular part-time agricultural, production and maintenance workers employed at the Employer’s Franklin, Mass. Facility.

Excluded: All casual employees, office clerical employees, confidential employees, supervisors, managers, guards, and supervisors as defined in the Act.

While NETA is not entirely sure which employees the Union intends to include in its petitioned-for unit, NETA has made a good-faith effort to list the employees that it believes the UFCW intended to include. NETA does not have departments identified as “agricultural,” “production,” or “maintenance.” Moreover, NETA does not employ “agricultural laborers” as defined under the Act.

B. Martins Was A Section 2(11) Supervisor

Mr. Martins was a Team Lead (“TL”) in NETA’s Kitchen Department from June 10, 2019 to July 15, 2020. As a TL, he was responsible, with other supervisors, for managing and supervising a group of twenty-three (23) Cooks and Dishwashers in NETA’s Kitchen. The Kitchen TL position is responsible for assisting the Kitchen Manager in the professional, safe and efficient operation of the Kitchen Department. The TL drives the execution of the Kitchen employees’ work, and he motivates and directs the Cooks and Dishwashers to achieve the best results in the Kitchen Department.

Mr. Martins’ key responsibilities as Kitchen TL required him to provide first line supervision to all Kitchen employees, including scheduling and assigning their work, developing their expertise and skills, issuing corrective actions, and writing, preparing, and delivering performance reviews, which directly impact the subordinates’ potential for promotion and pay adjustments.

1. Martins’ Disciplinary Authority

Throughout his employment as a TL, Martins “effectively recommended” discipline and other employment actions to the Kitchen Manager. On numerous occasions, he recommended progressive discipline of employees. Often, when Mr. Martins made a recommendation to discipline a Kitchen Department employee, his recommendation was carried out without the Kitchen Manager having any first hand knowledge of the incidents in question leading up to the discipline. On numerous occasions, he issued verbal or formal written warnings to employees which would be co-signed by a higher-level supervisor.

2. Martins’ Authority to Assign Work, Transfer Duties, and Other Supervisory Duties

In addition to regularly providing corrective actions about work performance, absenteeism, and customer service, without management veto, Martins also:

- Assigned daily work to employees in the Kitchen;
- Scheduled lunch break times as needed;
- Scheduled time off during the workday for employees who needed to run errands or attend doctor appointments; and
- Scheduled his subordinates’ days off.

Management accepted and rarely vetoed Mr. Martins' decisions in these areas. Significantly, Mr. Martins' also independently decided when to conduct quality checks of the work of other Kitchen employees.

Mr. Martins exercised his independent judgment to assign, re-assign, or transfer work among employees. For example, the Kitchen Department distributes a weekly production schedule that outlines the items to be produced during the week (e.g., cookies, candies, gummies, etc.). Although the Kitchen Manager was responsible for creating the production schedule, Mr. Martins was responsible for assigning which employees would do what work. Mr. Martins had the unfettered discretion to assign individuals to certain tasks without any oversight or input from the Kitchen Manager. In addition, he had the authority and discretion to re-assign tasks to employees based on their level of skill and/or experience. The Kitchen Manager *never* overruled Mr. Martins in this regard.

As a TL, Mr. Martins led the pre-shift meetings. During these meetings, Mr. Martins was responsible for informing the Kitchen employees of their assignments (or any updates or changes to such assignments), making Human Resources announcements, and issuing and announcing new policies or procedures.

Furthermore, Mr. Martins critiqued, verified, and checked the quality of work of his subordinates in the Kitchen Department. For example, Mr. Martins confirmed dosages in the final products produced by the Cooks and verified that employees completed their opening and closing checklists.

Mr. Martins also prepared and conducted annual performance evaluations of the Kitchen Department employees. These evaluations addressed a number of factors concerning an employee's performance, including but not limited to: whether the employee in question met the expectations of the department, whether the employee was able to learn new processes, and whether the employee was abiding by NETA's and the Department's policies. Mr. Martins also identified areas of improvement or opportunities for the employee. Notably, these annual performance evaluations were used to determine whether an employee would be promoted to the next level or receive a merit increase.

C. Martins Led The Petitioner's Organizing Effort

Mr. Martins was a primary union organizer and leveraged his supervisory authority to coerce employees to provide union support and sign union authorization cards. The evidence demonstrating this fact comes from Mr. Martin's own statements.

On or about July 8, 2020, NETA became aware that Mr. Martins participated in an internet radio show called "The Young Jurks." See <https://www.facebook.com/theyoungjurks/videos/617433465545555/?redirect=false>. During the show, Mr. Martins made a number of statements confirming his supervisory status. Regarding his kitchen subordinates, he said:

“I lead them all. I help them with their projects. They’re all the ones that cook everything. I’m more of a pencil pusher, a middle manager.” 7:38:42.¹

Also during the show, Mr. Martins stated that he led the union organizing effort at the Franklin facility:

“We still have to get enough majority of the cards signed to have the vote. So I am actively just trying to talk to as many people as I can to get them to sign a digital card, answer any questions that they have.” 7:30:57.

“Anybody in Franklin, you’ve got questions about the union, you want a digital card to sign, come to me. I’m always around, always available.” 8:07:49.

II. ARGUMENT

A. Martins, A Section 2(11) Supervisor, Tainted This Petition

1. **Martins Used His Position As A Supervisor To Lead The Union’s Showing Of Interest Campaign.**

Supervisor support for a union will taint a showing of interest when the supervisor’s actions would reasonably tend to coerce or interfere with the employees’ exercise of free choice in the election. *Harborside Healthcare, Inc.*, 343 NLRB No. 100 (December 8, 2004). *See also Napili Shores Condo. Homeowners’ Ass’n v. NLRB*, 939 F.2d 717, 719 (9th Cir. 1991), *citing NLRB v. Island Film Processing Co.*, 784 F.2d 1446, 1452 (9th Cir. 1986) (supervisor support for a union will taint a showing of interest when the supervisor’s actions would reasonably tend to lead the employees to support the union because they fear future retaliation by the supervisor). *Actual* coercion or intimidation is not required; circumstances that merely *tend to interfere* with the election are enough.

If a supervisor directly solicits authorization cards, **those cards are tainted and may not be counted for the showing of interest.** *See National Gypsum Co.*, 215 NLRB 74 (1974); *Southeastern Newspapers, Inc.*, 129 NLRB 311 (1960) (petition dismissed when a supervisor participated in obtaining the signatures of the employees whose cards were submitted for the showing of interest); *Toledo Stamping & Mfg. Co.*, 55 NLRB 865, 867 (1944) (petition dismissed when authorization cards secured with the assistance of a supervisor). Accordingly, Mr. Martins’ actions in obtaining employee signatures on cards, including his general solicitation of cards on the internet radio show, require that this Petition be dismissed.

¹ The timestamps refer to the running time clock that is visible on the bottom-left-hand corner of the video recording of the internet radio show, which is available at: <https://www.facebook.com/theyoungjurks/videos/617433465545555/?redirect=false>.

2. The Evidence Shows Several Indicia Of Supervisory Status, Which Demonstrates That Martins Is A Section 2(11) Supervisor.

The statutory definition of a “supervisor” under Section 2(11) of the Act lists 12 separate duties. An individual need not be granted or actually exercise authority in all twelve areas to qualify as a statutory supervisor. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), *cert. denied*, 338 U.S. 899 (1949). Instead, if an individual possesses just *one* of the twelve enumerated authority tests, that person should be classified as a supervisor. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). *See also Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (holding that an individual is a “supervisor” if: (1) the individual holds at least one of the supervisory powers listed in Section 2(11); (2) that authority is held “in the interest of the employer;” and (3) the “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment”).

As the U.S. Court of Appeals for the Ninth Circuit has stated, “the enumerated functions in Section 2(11) are to be read in the disjunctive, and the existence of *any* of them, regardless of the frequency of their performance, is sufficient to convey supervisory status.” *Butler-Johnson Corporation v. NLRB*, 608 F.2d 1303, 1306 n. 4 (9th Cir. 1979) (emphasis added). Accordingly, the key requirement of Section 2(11) is that the individual in question have some independent authority and judgment to act as an agent and in the interests of the employer in at least one of the Section 2(11) authority categories. *Westwood Health Care Center*, 330 NLRB 935 (2000). A person qualifies as a statutory supervisor if he possesses the requisite authority, *even* if he spends a majority of his time in manual, non-supervisory tasks. *Laser Tool, Inc.*, 320 NLRB 105 (1995). The power to “effectively recommend” action with respect to one or more of Section 2(11) authority indicators results in statutory supervisory status just as much as the independent, actual power to make decisions in these areas. *Albertsons, Inc.*, 310 NLRB 960 (1993) (grocery department managers were statutory supervisors because they could effectively *recommend* hiring, discipline, transfer, layoff and promotion); *K.B.I. Security Services*, 318 NLRB 268 (1995) (employee was a statutory supervisor because he could effectively *recommend* formal discipline).

Mr. Martins’ status as a 2(11) supervisor is confirmed by the fact that he exercised the authority to assign work and had responsibility to direct employees. The Board construes the term “assign” to mean “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks to an employee.” *Oakwood Healthcare Inc.*, 348 NLRB 686, 689 (2006). With regard to the assignment of “significant overall duties,” the Board stated in *Oakwood Healthcare* that assigning an employee to restock shelves in a housewares department would generally qualify as the authority to “assign” within the Board’s construction. *Id.*

The Board has defined the term “responsibly to direct” as follows: “If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both responsible...and carried out with independent judgment.” *Id.* The element of responsible direction involved a

finding of accountability, “it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary” and that there is “a prospect of adverse consequences for the putative supervisor arising from his/her direction of other employees.” *Id.* at 692.

As Kitchen Team Lead, one of Mr. Martins’ primary responsibilities was to assign workers to specific tasks and to monitor their performance of those duties. Mr. Martins was not “limited to acting as mere conduit[] for transmitting orders to [his] crews from higher supervision.” *See Reeves Bros.*, 277 NLRB 1568, 1579 (1986). Rather, he routinely assigned Cooks and Kitchen Processors in the Kitchen Department to particular work based on their relative skills and abilities and therefore engaged in the “act of designating an employee to a place.”

Moreover, Kitchen Department employees who called out of work were required to inform Mr. Martins, who was then responsible for deciding how to best manage each employee’s absence, including by changing work and assignments. This alone is sufficient to render Mr. Martins a 2(11) supervisor. In *Armored Transfer Service*, 287 NLRB 1244 (1988), an armored car dispatcher was held to be a 2(11) supervisor based in part on the fact that he “assigned men for weekend work, assigned men to special routes when customers called in for them, and assigned trucks.” Similarly, in *Rapid Armored Truck Corp.*, 281 NLRB 371 (1986), an account executive for an armored delivery service was found to be a 2(11) supervisor, where the account executive “set up the truck routes, including the times and the locations of the pickups and deliveries,” “reassign[ed] the order of stops,” and “reassign[ed] the truckmen to different trucks,” and where “[i]f there was any problem with the route, the employee would seek resolution from [the account executive].”

There were numerous occasions where Mr. Martins assigned workers to particular work, based on his independent judgment regarding their skills and abilities. He also was evaluated by the Kitchen Manager based on the performance of the employees he supervised. As such, there certainly was “a prospect of adverse consequences for the putative supervisor arising from his/her direction of other employees.” *Oakwood Healthcare Inc.*, 348 NLRB at 692.

III. CONCLUSION

The evidence reveals that Mr. Martins is a 2(11) supervisor. As such, his organizing efforts tainted the Union’s showing of interest. Therefore, the election must not be allowed to go forward, and the Petition must be dismissed. *Sourdough Sales*, 246 NLRB. 106 (1979); *Dexter Foods, Inc.*, 209 NLRB 369 (1974). In light of the foregoing, NETA also requests that the Petitioner be precluded from attempting to secure a new showing of interest for six (6) months following the dismissal. This period of time is necessary to remove the taint of supervisory participation and to ensure that eligible voters are able to freely and properly exercise their Section 7 rights.

Jarad Krantz, Esq.
August 21, 2020
Page 7

Very truly yours,

A handwritten signature in black ink, appearing to read "Neil V. McKittrick". The signature is fluid and cursive, with a prominent "N" and "M".

Neil V. McKittrick

43908104.2

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office.
If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

New England Treatment Access, LLC

2. TYPE OF ENTITY

☐ CORPORATION ☒ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION OR LLC

A. STATE OF INCORPORATION OR FORMATION B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

MA

SH Parent, 55 Ivan Allen Jr. Blvd., Atlanta, GA, (Parent)

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed)

Cultivation and Retail of Medical and Recreational use Cannabis

7A. PRINCIPAL LOCATION

5 Forge Parkway, Franklin, MA

7B. BRANCH LOCATIONS

1100 Washington St, Brookline + 118 Conz St, Northampton

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL

559

B. AT THE ADDRESS INVOLVED IN THIS MATTER

299

9. DURING THE MOST RECENT (Check the appropriate box): ☒ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR FY DATES

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.		<input checked="" type="checkbox"/>
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.		<input checked="" type="checkbox"/>
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount.		<input checked="" type="checkbox"/>
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount.		<input checked="" type="checkbox"/>
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.		<input checked="" type="checkbox"/>
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.	<input checked="" type="checkbox"/>	
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount.	<input checked="" type="checkbox"/>	
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input checked="" type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		<input checked="" type="checkbox"/>
I. Did you begin operations within the last 12 months? If yes, specify date:		<input checked="" type="checkbox"/>

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYEE GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☒ NO (If yes, name and address of association or group)

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
Christopher DeSimone	Director of Finance	cdesimone@netacare.org	508-590-1414 ext. 324

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE	SIGNATURE	E-MAIL ADDRESS	DATE
Katy L. Murray accounting manager	Katy L. Murray	Katy@netacare.org	8/21/2020

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

EXHIBIT 6a



**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

Attorneys at Law

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Lorenzo R. Cabantog
617.994.5713
lorenzo.cabantog@ogletreedeakins.com

August 25, 2020

Jarad Krantz
Field Examiner
United States Government
National Labor Relations Board
Region 1
10 Causeway Street, Suite 601
Boston, Massachusetts 02222
jarad.krantz@nrlrb.gov

RE: New England Treatment Access, LLC &
United Food and Commercial Workers, Local 1445 Case No. 01-RC-264290

Dear Mr. Krantz:

This letter is in response to your e-mail dated August 24, 2020 requesting additional information to support the Employer's contention that a supervisor, Jonathan Martins, tainted the showing of interest and election. Attached is a recording of an Internet radio show on which Mr. Martins appeared as referenced to in the Company's Statement of Position and Motion for Collateral Investigation. As discussed in those documents, the evidence of supervisory taint is based on Mr. Martins' own statements.

Please let me know if you have any additional questions.

Very truly yours,

/s/ Lorenzo R. Cabantog

Lorenzo R. Cabantog

Enclosure

43997123.1

EXHIBIT 6b

Video Part 1 –
Electronically filed
separately due to file
size exceeding 100MB

EXHIBIT 6c

Video Part 2 –
Electronically filed
separately due to file
size exceeding 100MB

EXHIBIT 6d

Video Part 3 –
Electronically filed
separately due to file
size exceeding 100MB

EXHIBIT 6e

Video Part 4 –
Electronically filed
separately due to file
size exceeding 100MB

EXHIBIT 6f

Video Part 5 –
Electronically filed
separately due to file
size exceeding 100MB